

ASSEMBLY BILL

No. 349

Introduced by Assembly Member Gatto

February 13, 2013

An act to amend Section 45125 of the Education Code, relating to school administration.

LEGISLATIVE COUNSEL'S DIGEST

AB 349, as introduced, Gatto. Classified employees: background checks.

Existing law requires the governing board of a school district to require each person to be employed in specified positions to have 2 fingerprint cards bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description of the applicant prepared by a local public law enforcement agency having jurisdiction in the area of the school district and requires the agency to transmit these items to the Department of Justice. Existing law requires the Department of Justice to ascertain whether the person has been arrested or convicted of a crime and forward this information to the employing agency within 15 working days after receiving the fingerprint cards.

This bill would require the Department of Justice to forward this information within 10 working days.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45125 of the Education Code is amended
2 to read:

1 45125. (a) (1) Except as provided in Section 45125.01, the
2 governing board of ~~any~~ a school district shall require each person
3 to be employed in a position ~~not requiring~~ *that does not require*
4 certification qualifications, except a secondary school pupil
5 employed in a temporary or part-time position by the governing
6 board of the school district having jurisdiction over the school
7 attended by the pupil, to have two fingerprint cards bearing the
8 legible rolled and flat impressions of the person's fingerprints
9 together with a personal description of the applicant prepared by
10 a local public law enforcement agency having jurisdiction in the
11 area of the school district, which agency shall transmit the cards,
12 together with the fee required by subdivision (f), to the Department
13 of ~~Justice~~; *Justice*, except that any district, or districts with a
14 common board, may process the fingerprint cards if the district so
15 elects.

16 (2) As used in this section, "local public law enforcement
17 agency" includes ~~any~~ a school district and as used in Section 45126
18 requires the Department of Justice to provide to ~~any~~ a school
19 district, upon application, information pertaining only to applicants
20 for employment by the district, including applicants who are
21 employees of another district.

22 (b) (1) Upon receiving the fingerprint cards, the Department
23 of Justice shall ascertain whether the applicant has been arrested
24 or convicted of any crime insofar as that fact can be ascertained
25 from information available to the department and forward the
26 information to the employing agency submitting the applicant's
27 fingerprints no more than ~~45~~ 10 working days after receiving the
28 fingerprint cards. The Department of Justice shall not forward
29 records of criminal proceedings that did not result in a conviction
30 but shall forward information on arrests pending adjudication.

31 (2) Upon implementation of an electronic fingerprinting system
32 with terminals located statewide and managed by the Department
33 of Justice, the Department of Justice shall ascertain the information
34 required pursuant to this subdivision within three working days.
35 If the Department of Justice cannot ascertain the information
36 required pursuant to this subdivision within three working days,
37 the department shall notify the school district that it cannot so
38 ascertain the required information. This notification shall be
39 delivered by telephone or electronic mail to the school district. If
40 a school district is notified by the Department of Justice that it

1 cannot ascertain the required information about a person, the school
2 district ~~may~~ *shall* not employ that person until the Department of
3 Justice ascertains that information.

4 (3) In the case of a person to be employed in a position not
5 requiring certification qualifications who is described in
6 subparagraph (A) or (B), the school district shall request the
7 Department of Justice to forward one copy of the fingerprint cards
8 to the Federal Bureau of Investigation for the purpose of obtaining
9 any record of previous convictions of the applicant.

10 (A) The person has not resided in the State of California for at
11 least one year immediately preceding the person's application for
12 employment.

13 (B) The person has resided for more than one year, but less than
14 seven years, in the State of California and the Department of Justice
15 has ascertained that the person was convicted of a sex offense
16 where the victim was a minor or a drug offense where an element
17 of the offense is either the distribution to, or the use of a controlled
18 substance by, a minor.

19 (c) The governing board of a school district shall not employ a
20 person until the Department of Justice completes its check of the
21 state criminal history file as set forth in this section and Sections
22 45125.5 and 45126, except that this subdivision does not apply to
23 secondary school pupils who are to be employed in a temporary
24 or part-time position by the governing board of the school district
25 having jurisdiction over the school they attend.

26 (d) The governing board of ~~each~~ *a* district shall maintain a list
27 indicating the number of current employees, except secondary
28 school pupils employed in a temporary or part-time position by
29 the governing board of the school district having jurisdiction over
30 the school they attend, who have not completed the requirements
31 of this section. The Department of Justice shall process these cards
32 within 30 working days of their receipt and any cards in its
33 possession on the date of the amendment of this section by
34 Assembly Bill 1610 of the 1997–98 Regular Session within 30
35 working days of that date. School districts that have previously
36 submitted identification cards for current employees to either the
37 Department of Justice or the Federal Bureau of Investigation shall
38 not be required to further implement the provisions of this section
39 as it applies to those employees.

1 (e) A plea or verdict of guilty or a finding of guilt by a court in
2 a trial without a jury or forfeiture of bail is deemed to be a
3 conviction within the meaning of this section, irrespective of a
4 subsequent order ~~under the provisions of~~ *pursuant to* Section
5 1203.4 of the Penal Code allowing the withdrawal of the plea of
6 guilty and entering of a plea of not guilty, or setting aside the
7 verdict of guilty, or dismissing the accusations or information.

8 (f) (1) The school district shall provide the means whereby the
9 fingerprint cards may be completed and may charge a fee
10 determined by the Department of Justice to be sufficient to
11 reimburse the department for the costs incurred in processing the
12 application. The amount of the fee shall be forwarded to the
13 Department of Justice with the required copies of applicant's
14 fingerprint cards. The governing board may collect a reasonable
15 fee payable to the local public law enforcement agency taking the
16 fingerprints and completing the data on the fingerprint cards. ~~In~~
17 ~~no event shall the fee~~ *The fees shall not* exceed the actual costs
18 incurred by the agency.

19 (2) The additional fees shall be transmitted to the city or county
20 treasury. If an applicant is subsequently hired by the board within
21 30 days of the application, the fee may be reimbursed to the
22 applicant. Funds not reimbursed to applicants shall be credited to
23 the general fund of the district. If the fingerprint cards forwarded
24 to the Department of Justice are those of a person already in the
25 employ of the governing board, the district shall pay the fee
26 required by this section, which fee shall be a proper charge against
27 the general fund of the district, and no fee shall be charged the
28 employee.

29 (g) This section applies to substitute and temporary employees
30 regardless of length of employment.

31 (h) Subdivision (c) of this section shall not apply to a person to
32 be employed if a school district determines that an emergency or
33 an exceptional situation exists, and that a delay in filling the
34 position in which the person would be employed would endanger
35 pupil health or safety.

36 (i) Where reasonable access to the statewide, electronic
37 fingerprinting network is available, the Department of Justice may
38 mandate electronic submission of the fingerprints and related
39 information required by this section.

1 (j) A school district shall request subsequent arrest service from
2 the Department of Justice as provided under Section 11105.2 of
3 the Penal Code.

4 (k) All information obtained from the Department of Justice is
5 confidential. ~~Each~~ *An* agency handling Department of Justice
6 information shall ensure the following:

7 (1) ~~No recipient may~~ *A recipient shall not* disclose its contents
8 or provide copies of information.

9 (2) Information received shall be stored in a locked file separate
10 from other files, and shall only be accessible to the custodian of
11 records.

12 (3) Information received shall be destroyed upon the hiring
13 determination in accordance with subdivision (a) of Section 708
14 of Title 11 of the California Code of Regulations.

15 (4) Compliance with destruction, storage, dissemination,
16 auditing, backgrounding, and training requirements as set forth in
17 Sections 700 through 708, inclusive, of Title 11 of the California
18 Code of Regulations and Section 11077 of the Penal Code
19 governing the use and security of criminal offender record
20 information is the responsibility of the entity receiving the
21 information from the Department of Justice.

22 (l) Notwithstanding any other provision of law, the Department
23 of Justice shall process pursuant to this section all requests from
24 a school district, an employer, or a human resource agency for
25 criminal history information on a volunteer to be used in a school.